



JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

**Circuit Court
(New Candidate)**

Full Name: David W. Miller

Business Address: Office of the Solicitor,
Second Judicial Circuit
P.O. Drawer 3368
Aiken, SC 29802-3368

Business Telephone: (803) 642-1557

1. Why do you want to serve as a Circuit Court judge?

I want to be a circuit court judge because I believe in our justice system. I also want to contribute my time, energy, and efforts to the justice system and help it be the best it can be. The justice system must have honest, fair, hardworking judges to ensure that disputes are resolved in a fair and impartial manner. Although I love practicing law and the advocacy involved in practice, serving as a judge would allow me to contribute to our system in a different way.

On a personal level, I want to serve as the resident judge for the Second Judicial Circuit because this seat has not been held by a resident of Aiken County since the death of Hayne Faust Rice on September 8, 1939. Many of the judges and attorneys I have worked with share my appreciation for the history of the judicial system in South Carolina. After more than seventy-nine years, I believe it's time for the Circuit to have a resident judge who lives in Aiken again.

After being a trial lawyer for nearly two decades, I believe I am prepared to contribute to the improvement of the judicial system in South Carolina as a circuit court judge.

2. Do you plan to serve your full term if elected?

Yes.

3. Do you have any plans to return to private practice one day?

No.

4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?

Yes.

5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?

Judges should not initiate, permit or consider *ex parte* communications unless those communications fall under one of the allowable exceptions enumerated in Canon 3(B) of the Judicial Code of Conduct. When those circumstances arise, for example in the context of an emergency temporary restraining order, there are rules ensuring fairness to the parties involved. I would follow the law appropriate to the situation.

6. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

If there is any appearance of bias, my own belief that I could remain impartial isn't the issue. Canon 3(E) requires recusal. Because the question presupposes the appearance of bias had been created by the disclosure and a party requested by recusal, I would recuse myself from the case.

7. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

I would disclose the financial or social involvement of my spouse or close relative in the matter to the counsel for the parties. If the parties and their counsel, after being given the opportunity outside my presence to discuss the matter, elected to waive any disqualification, I could continue to hear the matter, but only after the decision to waive any disqualification was placed on the record in open court or reduced to writing signed by the parties and their counsel. If they did not waive the disqualification, I would recuse myself from hearing the matter.

8. What standards would you set for yourself regarding the acceptance of gifts or social hospitality?

It is acceptable for a judge to accept social hospitality and gifts from relatives or friends for special occasions if the gift is relatively commensurate with the occasion. Despite these allowances, I would discourage any friends that were lawyers or potential litigants from giving me gifts for any occasion. In my experience, nearly everyone who gives me gifts is immediate family, and the gifts are generally not extravagant. As a judge, I would make every effort to maintain that status quo and would diligently follow Canon 4(D).

9. How would you handle a situation in which you became aware of misconduct or appearance of infirmity of a lawyer or of a fellow judge?

The Bench and Bar require self-regulation to effectively protect the public and the administration of justice. Self-regulation requires the Bench and Bar to participate meaningfully in this self-policing. Therefore, if the matter involved

misconduct of a fellow lawyer or judge, I would take appropriate action to address the situation. Appropriate action might include speaking directly to the lawyer or fellow judge about the matter, reporting the matter to the appropriate disciplinary authority, or referring the matter to an appropriate official for further investigation. If the misconduct involving a fellow judge raised a substantial question as to the judge's fitness for office, or if a lawyer's misconduct raised a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, I would report the misconduct to the appropriate authority. This action would be required of a judge under Canon 3(D) just as it applies to all lawyers under Rule 8.3 of the Rules of Professional Conduct, Rule 407, SCACR.

In the case of a fellow judge or lawyer exhibiting impairment or disability affecting the performance of their duties, Canon 3(G) requires taking appropriate action. Appropriate action means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a confidential referral to an assistance program, such as Lawyers Helping Lawyers or the South Carolina Bar in accordance with Rule 428, SCACR.

While that referral may satisfy my responsibility under Canon 3(G), there may be situations where the gravity of the conduct requires other action to be taken, including reporting the impaired judge or lawyer to the appropriate disciplinary authority. See Canon 3(D).

10. Are you a member of any organization or association that, by policy or practice, prohibits or limits its membership on the basis of race, sex, religion, or national origin? If so, please identify the entity and explain if this organization practices invidious discrimination on any basis.

No.

11. Have you engaged in any fund-raising activities with any political, social, community, or religious organizations? Please describe.

No.

12. Do you have any business activities that you would envision remaining involved with if elected to the bench?

No.

13. If elected, how would you handle the drafting of orders?

I would utilize form orders to the extent possible to minimize the expense to the parties and any delay in ruling on the issue. When a formal order was necessary, I would generally require the prevailing party to draft the proposed order and to submit it to opposing counsel for review before sending it to me. In some situations, particularly

complex legal matters, I would have both parties submit proposed orders outlining their arguments. I would require anyone submitting a proposed order to submit the order electronically so I would have the ability to make changes I deemed necessary to the order before signing it.

14. If elected, what methods would you use to ensure that you and your staff meet deadlines?

One of the first things I would do would be to make as many decisions as possible from the bench and avoid taking routine matters under advisement. I would also utilize a calendaring system that would alert me when I should have all proposed orders submitted to me for a previous term. I could then have a clerk go back through that term's roster to confirm that proposed orders had been received as directed and that I have dealt with reviewing and amending the orders in a timely fashion.

15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

It is the responsibility of the judge to apply the facts of a case to the law as it is written. Judges promote the public policy declared by the legislature by faithfully applying the laws passed to the facts, but judges should not set public policy. Setting public policy is the exclusive province of the General Assembly.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. If elected, what activities do you plan to undertake to further this improvement of the legal system?

The activity I look most forward to is advancing education about the judicial system and the operation of the court for new trial lawyers and, where appropriate, the public. I would like to teach seminars and participate with other judges in panel discussions.

17. Do you feel that the pressure of serving as a judge would strain personal relationships (i.e. spouse, children, friends, or relatives)? How would you address this?

I am blessed to have a family, including an extended family, that has come to understand my love for my job and the people I work with. Long hours and travel are always difficult, but with the support I have received from my family and friends, I do not believe the pressure of serving as a judge would be any greater than the pressure of being a dedicated lawyer. My wife and children will support me, as I support them. When the strain of an upcoming trial, a bad outcome in a case, or generally being overwhelmed by the moment has affected my personal relationships in the past, I have addressed that pressure with communication. I am confident that with the support and encouragement of my family, we can overcome any challenge.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

a. Repeat offenders:

Repeat offenders should be sentenced commensurate with the offense they are repeatedly committing. A recidivist armed robber has waived their right to live among polite society. More often I see repeat drug users or shoplifters in my current position. To the extent possible, I would try to examine the reason they are continuing to possess drugs, or to shoplift. Is it an issue of homelessness, addiction, or lack of vocational opportunity? If so, I would try to fashion a sentence to address the underlying cause of the criminal behavior.

b. Juveniles (that have been waived to the Circuit Court):

Juveniles in the General Sessions Court are a particularly difficult group to sentence. They almost never have a prior adult criminal history, but the fact they are in adult court means they are charged with a very serious offense. In many of these cases, the first time they come before the sentencing judge is the last real opportunity they have to make something meaningful of their lives. Hopefully, the conviction allows some discretion for the court to fashion an appropriate sentence to get them the help they need. Sadly, that is often not the case. Despite the desire to help these young offenders, their victims deserve justice too. There is no hard and fast rule on dealing with juvenile offenders because the unique circumstances that led them before the court instead of being in high school must be considered in every case. It is very difficult to find a sentence that is appropriate to satisfy the rehabilitative objective of the sentencing while still imposing an appropriate and measured punishment for the offense committed.

c. White collar criminals:

White collar criminals are criminals. As a general rule, the mechanism of committing their crimes has less immediate impact on the victim, but the long term effects of their activity can be devastating. Along with the standard sentencing considerations of prior criminal history and acceptance of responsibility, I would consider the amount of loss and the number of individuals victimized in the crime. Because white collar criminals generally engage in property offenses, it is rare that they would be incarcerated for a first offense, but if the numbers of victims or the amount of the loss justified them going to prison, I would not hesitate to impose such a sentence.

- d. Defendants with a socially and/or economically disadvantaged background:

The vast majority of defendants in criminal matters have a socially and/or economically disadvantaged background. Based on my experience, the only more common characteristic shared by defendants is drug abuse and mental health issues.

Often, these issues appear multiple times in a single defendant. While these defendants need to be punished for their crimes, it is important to always look for the underlying cause of the criminal behavior and to address those causes if we expect the behavior to change. The goals of sentencing in criminal cases are retribution and rehabilitation. Retribution in the form of punishment, and rehabilitation in the form of giving the offender another option to criminal activity in the future. The objective behind both of those goals is to have the person being sentenced not commit future crimes. If there is a way to make that happen without extended (or any) incarceration, that is preferable to locking someone up.

- e. Elderly defendants or those with some infirmity:

Elderly and infirm defendants present specific challenges to the goals of sentencing outlined above. The expense of incarcerating an inmate with a chronic condition must be considered when sentencing. Likewise, a three year sentence for an elderly defendant could potentially be a life sentence. I would be more likely to place a defendant with an infirmity or an elderly defendant on supervised release in lieu of incarcerating them.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No.

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

Yes. Canon 3(E) would not require disqualification in a situation where only a *de minimis* financial interest existed in a party involved in the matter.

21. Have you met the mandatory minimum hours requirement for continuing legal education courses for the past reporting period?

Yes.

22. What do you feel is the appropriate demeanor for a judge and when do these rules apply?

A judge should be patient, courteous, and humble. A judge should try to be cordial and understanding of others when the situation allows for that. A judge can display a sense of humor, but it is very rarely appropriate while presiding from the bench. A judge should never be petty or dismissive. The courtroom is a professional workplace and the judge's demeanor should reinforce that fact. These rules apply to

interactions both inside and out of the courtroom.

23. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or pro se litigants?

It is never appropriate for a judge to express anger with a member of the public, especially with a criminal defendant. Judges are humans and they have human responses to being challenged, disrespected, or insulted. A judge should always try as much as possible to control their anger and limit any off-the-cuff responses or outbursts. This also applies to dealing with attorneys and pro se litigants. One of the greatest tools any judge has is the ability to stop court when they want and leave the bench, even if only for a few minutes. When the judge takes the time to reflect on the situation, the judge will have the opportunity to measure his or her response. A judge should maintain and enforce high standards of conduct in the courtroom. No matter how cordial the judge tries to be, at some point, they will get angry. The proper response is to find a way to suppress that anger.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Sworn to before me this _____ day of _____, 2019.

(Signature)

(Print Name)

Notary Public for South Carolina

My Commission Expires: _____